THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13058 of 2007

Dated:25.06.2007

Between:

T.Srinivasan and another.

…Petitioners

and

The Mandal Revenue Officer, Tahsildar, Tirupati Urban Mandal, Tirupati Town, Chittoor District.

…Respondent

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ORDER:

The petitioners herein allege that the land admeasuring Acs.9.36 cents in Survey No.22/1 situated at Thimminaidupalem Revenue Village was originally assigned to one T.K.Seshacharyulu on 01.04.1933 subject to reservation of two cart tracks of 12 links in width each passing through the fields. Subsequently, the joint family of the assignee partitioned all the joint family properties including the above said land. After the death of Seshacharyulu, his wife (T.K.Padmavathamma) and children succeeded to his property. Subsequently, T.K.Padmavathamma also died in May 2002. During her life time, T.K.Padmavathamma alienated an extent of Acs.2.20 cents out of Acs.9.36 cents in the said survey number to one C.Ammaji, under a registered sale deed. Later, the daughters of original assignee, by name T.K.Rukmini and R.Chandra gifted an extent of Acs.3.00 of land out of their share to the petitioners, who are the sons of their elder sister, under a registered settlement deed dated 28.04.2005. The petitioners, in turn, sold an extent of Acs.2.00 out of Acs.3.00 to one C.Surendranatha Reddy and two others. While so, the respondent issued notice dated 17.04.2007 in Form-I to T.K.Padmavathamma under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007 (for short 'the Rules'), asking her to show cause as to why the assignment should not be cancelled for alienating the same in contravention of the provisions of

Section 3(2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'). The petitioners submitted explanation and orders are yet to be passed by the respondent. Alleging that the respondents are interfering with their possession without passing orders pursuant to the impugned notice, the present writ petition is filed.

In a recent unreported judgment in W.P.No.6934 of 2007 dated 13.4.2007, after referring to the provisions of the Act, while indicating the possible defense/defenses to the action initiated for resumption of the land under Section 3 of the Act, this Court observed as under.

> When action is initiated and a notice in Form-I is issued to the person in occupation of the assigned land, the possible defences could be (i) that the land in possession of the recipient of the notice is not assigned land; (ii) that there was no transfer of assigned land as contemplated under Section 3(2) of the Act; (iii) that assigned land was purchased by landless and poor person in good faith for valuable consideration from the original assignee; (iv) that Section 6 of the Act exempts the transfer of land from the provisions of the Act; (v) that the transfer of assigned land was permitted by the District Collector under Section 5 of the Act; and (vi) that the land was assigned without condition of non-alienation. There could also be an objection to such notice that in an earlier enquiry authorities already treated the land as not covered under the Act. In all these situations, it is certainly a matter for enquiry by the authorized officer and lack of jurisdiction cannot be presumed readily. Even where the case does not fall under Sections 3(2), 5 and 6 of the Act still unless and until enquiry is conducted as contemplated under the Act and the Rules, no conclusion can be drawn. As the enquiry is still pending before the third respondent, it would not be proper for this Court to make any observations or record passing remarks on the nature of the land or the nature of occupation of the land by the petitioner. These are the matters for enquiry before the third respondent.

In this case, learned Counsel for the petitioner contends that as there was no clause in the patta granted to the original assignee in 1933 prohibiting alienation, the provisions of the Act and the Rules do not apply. Even in such an event, it is a matter for enquiry and the petitioners can raise all such defenses. It is axiomatic that against a show cause notice, especially, when an enquiry is pending before the authority, a Writ Petition would not lie. The petitioners have already submitted explanation, and the respondent has to pass orders pursuant to the show cause notice. As the enquiry is still pending before the respondent, this Court is not inclined to express any opinion on merits of the case.

The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

25.06.2007
vs